



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2012-0798; FRL 9923-92-Region 4]

**Approval and Promulgation of Implementation Plans; Mississippi: New Source Review -
Prevention of Significance Deterioration**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve revisions to the Mississippi State Implementation Plan (SIP) submitted by the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), on February 10, 2012. The SIP revision modifies Mississippi's New Source Review (NSR) Prevention of Significant Deterioration (PSD) program to incorporate by reference (IBR) certain Federal PSD regulations. The revision also removes certain language from the SIP that is no longer relevant. EPA is approving Mississippi's February 10, 2012, revision to Mississippi's SIP because the Agency has determined that the changes are consistent with the Clean Air Act (CAA or Act) and EPA's PSD permitting regulations.

DATES: This rule is effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2012-0798. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy at the Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory and Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9088. Ms. Bell can also be reached via electronic mail at bell.tiereny@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is taking final action to approve Mississippi's February 10, 2012, SIP revision to IBR¹ federal requirements for NSR permitting. Mississippi's February 10, 2012, SIP revision includes changes to the air quality regulations in Air Pollution Control, Section 5 (APC-S-5) - *Regulations for the Prevention of Significant Deterioration of Air Quality*. These rule changes were provided to comply with Federal NSR PSD permitting requirements. The February 10, 2012, SIP submission updates the IBR date at APC-S-5 to November 4, 2011, for the Federal PSD permitting regulations at 40 CFR 52.21 and portions of 51.166 to include PSD provisions promulgated in the Carbon Dioxide (CO₂) Biomass Deferral Rule,² Particulate Matter (PM₁₀), Surrogate and Grandfather Policy Repeal,³ and Reasonable Possibility Rule.⁴ However, EPA cannot act on the portion of Mississippi's SIP submission that IBR the July 20, 2011, CO₂ Biomass Deferral Rule because the United States Court of Appeals for the District of Columbia

¹ Throughout this rulemaking the acronym IBR means "incorporate by reference" or "incorporates by reference."

² "Deferral for CO₂ Emissions From Bioenergy and Other Biogenic Sources Under the Prevention of Significant Deterioration (PSD) and Title V Programs," Final Rule, 76 FR 43490, (July 20, 2011) (hereinafter referred to as the "CO₂ Biomass Deferral Rule").

³ Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}); Final Rule To Repeal Grandfather Provision, 76 FR 28646 (May 18, 2011) (hereinafter referred to as the "PM₁₀ Surrogate and Grandfather Policy Repeal").

⁴ "Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping" Final Rule, 72 FR 72607, (December 21, 2007) (hereinafter referred to as the "Reasonable Possibility Rule").

Circuit (D.C. Circuit) issued a decision on July 12, 2013, in *Center for Biological Diversity v. EPA*, 722 F.3d 401 (D.C. Cir. 2013) vacating the rule. Accordingly, Mississippi has since submitted a letter to EPA dated October 22, 2014, requesting that the Biomass Deferral Rule provisions from the February 10, 2012, SIP submission be withdrawn from EPA's consideration; therefore these provisions are no longer before EPA for consideration. The letter can be found in Docket ID: EPA-R04-OAR-2012-0798.

On August 6, 2014, EPA published a proposed rulemaking to approve the aforementioned changes to MDEQ's NSR program at APC-S-5. *See* 79 FR 45733. Comments on the proposed rulemaking were due on or before September 5, 2014. No comments, adverse or otherwise, were received on EPA's August 6, 2014, proposed rulemaking. Pursuant to section 110 of the CAA, EPA is now taking final action to approve the changes to Mississippi's NSR program as provided in EPA's August 6, 2014, proposed rulemaking. EPA's August 6, 2014, proposed rulemaking contains more detailed information regarding Mississippi's SIP revision being approved today, and the rationale for today's final action. Detailed information regarding the Reasonable Possibility Rule and PM₁₀ Surrogate and Grandfather Policy Repeal can be found in EPA's August 6, 2014, proposed rulemaking as well as in the aforementioned final rulemakings. *See* 72 FR 72607 (December 21, 2007) and 76 FR 28646 (May 18, 2011), respectively. These rulemakings are summarized below. This final action approves a revision to the Mississippi SIP that (1) IBR the PSD provisions promulgated in the PM₁₀ Surrogate and Grandfather Policy Repeal and the Reasonable Possibility Rule, and (2) removes language from the SIP relating to the PM₁₀ Surrogate and Grandfather Policy and the Reasonable Possibility Rule that is no longer relevant.

A. Reasonable Possibility Rule

On December 14, 2007, EPA issued a final rule that provides additional explanation and more detailed criteria to clarify the “reasonable possibility” recordkeeping and reporting standard found in 40 CFR 52.21(r)(6) and 40 CFR 51.165(a)(6) and 51.166(r)(6) of the 2002 NSR reform rules.⁵ The “reasonable possibility” standard establishes for sources and reviewing authorities the criteria for determining when recordkeeping and reporting are required for a major stationary source undergoing a physical change or change in the method of operation that does not trigger major NSR permitting requirements. The standard also specifies the recordkeeping and reporting requirements for such sources. The December 14, 2007, final rule clarified and required recordkeeping and reporting when the projected increase in emissions to which the “reasonable possibility” test applies equals or exceeds 50 percent of the Act’s NSR significance levels for any pollutant. *See* 72 FR 72607. NSR significance levels are pollutant-specific threshold emission rates (tons per year). If a project results in an emissions increase of a regulated NSR pollutant that equals or exceeds the significance level for that pollutant, the increase is a “significant emissions increase” and NSR permitting requirements would apply. EPA’s December 14, 2007, rulemaking clarifying the reasonable possibility provision was in response to the June 24, 2005, remand from the D.C. Circuit Court requiring that EPA either provide an acceptable explanation for its “reasonable possibility” standard or devise an appropriately supported alternative.

⁵ Prevention of Significant Deterioration and Nonattainment New Source Review: Reasonable Possibility in Recordkeeping, 72 FR 72607(December 21, 2007) (hereafter referred to as the Reasonable Possibility Rule). For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002) and <http://www.epa.gov/nsr>

MDEQ adopted the NSR Reform rules in the SIP on July 28, 2005, but did not incorporate the “reasonable possibility” provision into their SIP at APC-S-5 due to the remand. In its 2005 PSD regulations at APC-S-5 (2.6), MDEQ excluded the following phrase from its IBR of 40 CFR 52.21: “in circumstances where there is a reasonable possibility, within the meaning of paragraph (r)(6)(vi) of 40 CFR 52.21, that a project that is not a part of a major modification may result in a significant emissions increase.”⁶ MDEQ’s February 10, 2012, SIP revision removes the “reasonable possibility” exclusion at APC-S-5(2.6) and IBR EPA’s December 21, 2007, revised definition of “reasonable possibility” into its SIP.

B. PM₁₀ Surrogate and Grandfather Policy Repeal

In the NSR PM_{2.5} Rule,⁷ EPA finalized regulations to establish the framework for implementing preconstruction permit review for the PM_{2.5} NAAQS in both attainment and nonattainment areas. This rule included a grandfather provision that allowed PSD applicants that submitted their complete permit application prior to the July 15, 2008, effective date of the NSR PM_{2.5} Rule to continue to rely on the 1997 PM₁₀ Surrogate Policy rather than amend their application to demonstrate compliance directly with the new PM_{2.5} requirements. *See* 73 FR

⁶ On July 10, 2006, EPA published the final rulemaking approving Mississippi’s SIP revision adopting the NSR Reform Rule.⁶ *See* 71 FR 38773. In the approval, EPA acknowledged that Mississippi’s rule did not contain the reasonable possibility language that was included in the remand and stated, “EPA continues to move forward with its evaluation of the portion of its NSR reform rules that were remanded by the D.C. Circuit and is preparing to respond to the D.C. Circuit’s remand. EPA’s final decision with regard to the remand may require EPA to take further action on this portion of Mississippi’s rules.”

⁷ This rulemaking established regulations to implement the NSR program for the PM_{2.5} NAAQS on May 16, 2008. *See* 73 FR 28321. As a result of EPA’s final NSR PM_{2.5} Rule, states were required to submit SIP revisions to EPA no later than May 16, 2011, to address these requirements for both the PSD and NNSR programs. On May 12, 2011, Mississippi submitted a SIP revision to IBR the NSR PM_{2.5} Rule into the state’s SIP at APC-S-5. EPA approved portions of the NSR PM_{2.5} rule into the Mississippi SIP PSD program on September 26, 2012. *See* 77 FR 59095.

28321. On May 12, 2011, Mississippi submitted a SIP revision that excluded the PM₁₀ surrogate grandfathering provision at 40 CFR 52.21(i)(1)(xi) from the state's PSD regulations. EPA approved portions of Mississippi's May 12, 2011, SIP revision on September 26, 2012 (77 FR 59095). On May 18, 2011, EPA took final action to repeal the PM_{2.5} grandfathering provision at 40 CFR 52.21(i)(1)(xi). *See* 76 FR 28646. Mississippi's February 10, 2012, SIP revision IBR the version of 40 CFR 52.21 that includes the PM₁₀ Surrogate and Grandfathering Rule Repeal and removes the May 12, 2011, PM₁₀ surrogate exclusion language from the PSD regulations at APC-S-5.

II. This Action

EPA is taking final action to approve Mississippi's February 10, 2012, SIP submission that updates the IBR date in Mississippi's SIP (at APC-S-5) to November 4, 2011, for 40 CFR 52.21 and portions of 51.166, to include PSD provisions promulgated in the PM₁₀ Surrogate and Grandfather Policy Repeal and Reasonable Possibility Rule. As stated above and in EPA's August 6, 2014, proposed rulemaking, EPA is not approving the CO₂ Biomass Deferral Rule into the Mississippi SIP because of the D.C. Circuit court's July 12, 2013, decision to vacate the rule. Accordingly, on October 22, 2014, MDEQ submitted a letter to EPA requesting that the CO₂ Biomass Deferral Rule provisions in the February 10, 2012, SIP submission be withdrawn from EPA consideration; therefore these provisions are no longer before EPA for consideration.

Regarding the 2007 Reasonable Possibility Rule, Mississippi's February 10, 2012, SIP revision removes the "reasonable possibility" exclusion at APC-S-5(2.6) and IBR EPA's December 21, 2007, revised definition of "reasonable possibility."

Mississippi's February 10, 2012, SIP submittal also incorporates into the Mississippi SIP the version of 40 CFR 52.21 as of November 4, 2011, which includes the May 18, 2011, PM₁₀ Surrogate and Grandfather Policy Repeal. Thus, the language previously approved into Mississippi SIP at APC-S-5(2.7) that excludes the grandfathering provision is no longer necessary. Mississippi's February 10, 2012, SIP submittal removes this unnecessary language.

III. Final Action

EPA is taking final action to approve Mississippi's February 10, 2012, SIP revision that (1) updates the IBR date in APC-S-5 to November 4, 2011, for the Federal PSD permitting regulations at 40 CFR 52.21 and portions of 51.166 to include the Reasonable Possibility Rule and the PM₁₀ Surrogate and Grandfather Policy Repeal, and (2) removes language from the SIP at APC-S-5 pertaining to the PM₁₀ Surrogate and Grandfather Policy and the Reasonable Possibility Rule that is no longer relevant. EPA has made the determination that these changes to Mississippi's SIP are approvable because they are consistent with section 110 of the CAA and EPA's PSD permitting regulations.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as

meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for

judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,
Intergovernmental relations, Reporting and recordkeeping requirements,

Dated: February 13, 2015.

V. Anne Heard,

Acting Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

PART 52-APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart Z - Mississippi

2. Section 52.1270(c), is amended by revising the entries under the heading

“APC-S-5” to read as follows:

§52.1270 Identification of plan.

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(c) * * *

EPA APPROVED MISSISSIPPI REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
**	**	*	*	*
APC-S-5 Regulations for Prevention of Significant Deterioration for Air Quality				

All		12/14/2011	<p>[Insert date of publication in <u>Federal Register</u>]</p> <p>[Insert Federal Register citation]</p>	<p>The approval does not include incorporation by reference of the CO2 Biomass Deferral which was withdrawn by the State on October 22, 2014.</p> <p>On 9-26-2012, EPA approved a revision to APC-S-5 which incorporated by reference the regulations found at 40 CFR 52.21 as of March 22, 2011. This approval did not include Mississippi's revision to IBR (at Rule APC-S-5) the term “particulate matter emissions” (as promulgated in the May 16, 2008 NSR PM_{2.5} Rule (at 40 CFR 51.166(b)(49)(vi)) and the PM_{2.5} SILs threshold and provisions (as promulgated in the October 20, 2010 PM_{2.5} PSD Increment-SILs-SMC Rule at 40 CFR 52.21(k)(2)).Note : On October 22, 2014, Mississippi withdrew the PM2.5 SILs provision from Mississippi’s May 18, 2011 SIP Submission.</p>
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				<p>On December 29, 2010, EPA approved a revision to APC-S-5 which incorporated by reference the regulations found at 40 CFR 52.21 as of September 13, 2010. <i>See</i> 75 FR 81858. That action approved the incorporation by reference with the exception of the phrase “except ethanol production facilities producing ethanol by natural fermentation under the North American Industry Classification System (NAICS) codes 325193 or 312140,” APC-S-5 incorporated by reference from 40 CFR 52.21(b)(1)(i)(a) and (b)(1)(iii)(t). Additionally, that final EPA action did not incorporate by reference, into the Mississippi SIP, the administrative regulations that were amended in the Fugitive Emissions Rule (73 FR 77882) and are stayed through October 3, 2011.</p>
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[FR Doc. 2015-05072 Filed: 3/4/2015 08:45 am; Publication Date: 3/5/2015]